

## **REMARKS/ARGUMENTS**

### **A. Notice to Applicant**

1. Applicant acknowledges the communication mailed on January 13, 2006 was in response to the amendment filed by Applicant on October 7, 2005, that claims 1-32 are pending, and that claims 1-32 were previously amended.

### **B. In the Specification**

2. Applicant acknowledges the quotation of the appropriate paragraph of 35 U.S.C. 112 that forms the basis for the objection to of the specification in the action.

3. Applicant acknowledges that Examiner objects to the specification as amended by Applicant in the response filed on October 7, 2005 because Examiner believes that the specification does not provide support for the invention as claimed in the response.

4. Applicant acknowledges that Examiner objects to the specification as amended by Applicant in the response filed on October 7, 2005, under 35 U.S.C. 132(a), as Examiner believes the response introduces new matter into the disclosure of the invention. Particularly, Examiner objects to the newly added recitation of "converting information responsive to said condition-specific interview from language not containing technical medical terminology into language containing technical medical terminology," "in language not containing technical medical terminology," and "transmitting said pre-visit physician report to the physician in language containing technical medical terminology for the purpose of enabling efficient diagnosis and treatment of the patient" within claims 3, 5, 6, 7, 8, and 9, and requests that Applicant cancel the new matter.

Applicant strongly disagrees with this analysis. No new matter has been introduced. The additions to the specification and claims are clearly supported by the disclosure and by everyday facts well known in the medical treatment of patients. First, whenever a chart note is created for a physician it is necessarily in the form of highly technical medical language and terminology. This is the most efficient method. Physicians speak in a language that can only be learned in medical school and practice. It is much more efficient to transmit information, and to communicate, using this technical language and terminology. All doctors and many other medical workers do it, as this is a very common practice. Therefore, anyone skilled in the medical arts knows that the chart note will contain mostly technical medical information regarding diagnosis and treatment. Both the specification and the drawings clearly support this given the noticeable fact that all chart notes contain technical medical terminology (see below). Whenever a chart note is disclosed, it is clear to those skilled in the art to expect technical medical terminology. This is old and well known in the art, and the examiner should take notice of this connection between chart notes and technical medical terminology. The instant application shows the creation of a chart note from the patient interview, prior to the office visit, and this creation of the chart note necessarily involves the conversion of layman's terms to technical medical terminology. The new matter rejection is improper on its face, and should be withdrawn.

However, notwithstanding the above, in response, Applicant has amended two separate paragraphs in the specification to eliminate the portions objected to by Examiner. Further, Applicant replaced the objected to language with language nearly identical to that as originally disclosed by Applicant. In making these amendments, Applicant earnestly believes that it has not added new matter into the disclosure. Support for Applicant's amendments can be found in the Abstract, Figure 3, and Publication No. 2002/0022975 paragraphs [0115] through [0123]. Therefore, as amended, Applicant respectfully requests that the 112 objections to the previously amended specification be withdrawn by Examiner.

**C. In the Claims**

Claims 1-32 are pending in this application. Claims 1, 3 and 5-9 have been amended to correct language, syntax, avoid the citation of the prior art, and/or point out the specific features of Applicant's invention with greater clarity. No claims have been cancelled. No new claims have been added. No new matter has been added.

***Regarding the Claim Rejections under 35 U.S.C. 112***

Applicant acknowledges the quotation of the appropriate paragraph of 35 U.S.C. 112 that forms the basis for the rejections under this section made in the office action.

5. Claims 3-10 have been rejected under the first paragraph of 35 U.S.C. 112 as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art (doctors) that the inventor(s), at the time the application was filed, had possession of the claimed invention and for the reasons set forth in the objection to the specification set forth above. Claims 3 and 5-9 were rejected as citing new matter, while claims 4 and 10 were rejected as incorporating the new matter as being dependent on those claims. Applicant respectfully disagrees with the new matter rejection of the claims in light of the amendments to claims 3 and 5-9 and arguments presented above and below. Thus, Applicant now believes that claims 3-10 are now in condition for allowance.

A. Regarding claim 3, claim 3 was amended to eliminate references to the conversion of information into language containing technical medical terminology or the transmission of a report containing language including technical medical terminology. Rather, the claim was amended to include the conversion of information into physician-oriented condition specific information, and the transmission of a report to a physician in language including physician-oriented condition specific information. Support for these amendments can be found in the Abstract, Figure 3, and Publication No. 2002/0022975 paragraphs [0115] through [0123].

Therefore, because it is Applicant's belief that, as amended, claim 3 does not include new matter that was not supported in the original disclosure, Applicant now believes that claim 3 is in condition for allowance.

**B.** Regarding claim 4, claim 4 was rejected based on its dependency on claim 3. Because Applicant believes that, as amended, claim 3 is in condition for allowance, Applicant also believes that claim 4 is in condition for allowance. Support for any previous amendment to claim 4 can be found in the Abstract, Figure 3, and Publication No. 2002/0022975 paragraphs [0115] through [0123].

**C.** Regarding claim 5, claim 5 was amended to eliminate references to the transmission of a pre-visit patient summary to the patient that did not include language containing technical medical terminology. Support for this amendment can be found in the Abstract, Figure 3, and Publication No. 2002/0022975 paragraphs [0115] through [0123]. Therefore, because it is Applicant's belief that, as amended, claim 5 does not include new matter that was not supported in the original disclosure, Applicant now believes that claim 5 is in condition for allowance.

**D.** Regarding claim 6, claim 6 was amended to eliminate references to the generation of condition-specific physician questions in language not containing technical medical terminology and the transmission of pre-visit condition-specific physician questions that do not include language containing technical medical terminology. Support for this amendment can be found in the Abstract, Figure 3, and Publication No. 2002/0022975 paragraphs [0115] through [0123]. Therefore, because it is Applicant's belief that, as amended, claim 6 does not include new matter that was not supported in the original disclosure, Applicant now believes that claim 6 is in condition for allowance.

**E.** Regarding claim 7, claim 7 was amended to eliminate references to the transmission of a physician report containing language including technical medical terminology. Rather, the claim was amended to include the transmission of a physician report in language including physician-oriented condition specific information. Support for this amendment can be found in

the Abstract, Figure 3, and Publication No. 2002/0022975 paragraphs [0115] through [0123].

Therefore, because it is Applicant's belief that, as amended, claim 7 does not include new matter that was not supported in the original disclosure, Applicant now believes that claim 7 is in condition for allowance.

F. Regarding claim 8, claim 8 was amended to eliminate references to the generation of a post-visit patient report to the patient that did not include language containing technical medical terminology. Support for this amendment can be found in the Abstract, Figure 3, and Publication No. 2002/0022975 paragraphs [0115] through [0123]. Therefore, because it is Applicant's belief that, as amended, claim 8 does not include new matter that was not supported in the original disclosure, Applicant now believes that claim 8 is in condition for allowance.

G. Regarding claim 9, claim 9 was amended to eliminate references to the generation of a pre-visit patient summary that did not include language containing technical medical terminology. Support for this amendment can be found in the Abstract, Figure 3, and Publication No. 2002/0022975 paragraphs [0115] through [0123]. Therefore, because it is Applicant's belief that, as amended, claim 9 does not include new matter that was not supported in the original disclosure, Applicant now believes that claim 9 is in condition for allowance.

H. Regarding claim 10, claim 10 was rejected based on its dependency on claim 9. Because Applicant believes that, as amended, claim 9 is in condition for allowance, Applicant also believes that claim 10 is in condition for allowance. Support for any previous amendment to claim 10 can be found in the Abstract, Figure 3, and Publication No. 2002/0022975 paragraphs [0115] through [0123].

***Regarding the Claim Rejections under 35 U.S.C. 103***

6. Applicant acknowledges the quotation of the appropriate paragraph of 35 U.S.C. 103 that forms the basis for the rejections under this section made in the office action.

7. Claims 1-4, 11-13, 15, 17-28, 30, and 32 are rejected under 35 U.S.C. 103(a) over Joao, in view of Campbell et al. (6,047,259; hereinafter Campbell), and further in view of Cummings, Jr. et al. (6,345,260; hereinafter Cummings). Applicant respectfully disagrees with this obviousness rejection in light of the arguments presented below.

(A) As per claim 1, step (b) of claim 1 was amended, in response to Examiner's response, to eliminate the "can be" language and replace it with "is", clarifying that based on the patient responses to interview questions, the content and amount of the interview questions is dynamically altered. Further, to more particularly point out and distinctly claim Applicant's invention, step (b) of claim 1 was amended to clarify that the patient completes the condition-specific interview after logging onto a server site. This amendment is supported by the language in the claim that the interview is "for the patient".

As amended for clarification, Applicant respectfully disagrees with Examiner's obviousness rejection of claim 1 in light of Joao, Campbell, and Cummings. As for Campbell, Campbell discloses an invention involves a software system for managing a health care practice. Among other features, the diagnosis software generates a list of possible diagnoses based on the observations recorded from the physical exam, the "user" can interactively select a diagnosis by selecting a diagnosis from a rule out list and watching the display as the system dynamically updates the status of unresolved symptoms, etc... (see Abstract). However, Campbell's invention is primarily directed at software tools to help "manage" a physical exam (see Title) and guide a "user" through the physical exam (see Abstract). Applicant's invention on the other hand, involves a feature that dynamically conducts an interview of the patient *before* the examination process, not during. Campbell neither teaches nor suggests conducting a dynamic interview before an examination occurs.

Further, Campbell discloses that a "user" is involved in the dynamic interview process (see Abstract). Campbell also discloses that "the physical exam software modules walk the *nurse and doctor* through an entire medical exam. The software displays exam screens that prompt the

*user* for input” (col. 7, lines 31-35). This strongly indicates that the “users” are the nurses and doctors. This contention is further supported in Campbell, where it is disclosed that “the lab functions of the system include an interactive *user* interface that enables *members of a provider team* to look up a patient and either enter lab results or view a list of tests that need to be performed for a patient (col. 8, lines 4-8). A patient is not a member of a provider team. Further, because “user” and “patient” are referred to as different subjects in the sentence, this suggests that a patient is not a user.

Additionally, Campbell discloses that “*personnel* in the hospital can check on the status of *patients* occupied in the exam room” (col. 11, lines 41-42), “a *user* can change the status of a *patient* in the exam room by clicking on a control button in the window” (col. 1, lines 64-65), and “when the *nurse* logs onto the computer located within the exam room, the physical examination for the *patient* assigned to the exam room is presented” (col. 12, lines 5-7). Additionally, Campbell discloses that “as the user enters information (by clicking on buttons or entering text), the server dynamically updates the database and evaluates the data to determine whether to prompt the user for additional information by displaying questions and supplemental screens that prompt the user to input medical observations” (col. 13, lines 10-18). Because a “user” inputs medical observations, and this task is generally for nurses, doctors, and other personnel, not patients, this demonstrates that a patient is not a “user”.

The above disclosure reflects the continuing theme in Campbell that the person who partakes in the dynamic interview is not the patient and that the dynamic interview is not *for* the patient (see also col. 13, lines 40-51). Given that step (d) of claim 1 of Applicant’s invention is directed to the conducting of the condition-specific interview with the *patient* by said server site, this shows that the patient must complete the dynamic interview. Therefore, the conduction of a dynamic interview or series of questions by a nurse, doctor, or other hospital personnel, *during* and in connection with the examination process itself, does not make it obvious for one with ordinary skill in the art to have a dynamic interview to be completed by the patient *before* an examination by the doctor, nurse, or other personnel.

Similarly, because Campbell discloses that a nurse, doctor, or other personnel is a “user” of the software, these “users” must log onto the server computer/site. Step (c) of claim 1 of Applicant’s invention states that a *patient* logs onto the server site. Although Campbell uses the term “client computer” (col. 12, line 9; col. 14, line 27) and “client” (col. 12, line 45), this is referring to the “client/server” computer relationship and not the “doctor/client” (doctor/patient) relationship (see also col. 13, lines 27-35 – client referred to as “it” and being able to “display additional queries”). Thus, Campbell does not disclose, suggest, or teach that a patient uses a computer to log onto a server site.

Further, Campbell does not disclose or suggest the generation of a chart note by a server site, as step (f) in claim 1 of Applicant’s invention requires. Campbell does disclose software wherein a user can interactively select a diagnosis by selecting a diagnosis from a rule out list and watching the display as the system dynamically updates the status of unresolved symptoms (see Abstract). This feature cannot be classified as “generating a chart note” because the information is dynamically generated on the screen, not part of a later report. Further, the ability of a user to select a treatment protocol that is integrated with future physical exams (see Abstract) also cannot be considered as “generating a chart note”, as all of the information is also located on the screen within the program, not in a report that is generated and transmitted to the physician. Therefore, step (f) of claim 1, requiring the server to generate a chart note, is also not obviated by Campbell. As for Cummings, Cummings discloses a system and method for scheduling appointments with a professional such as a doctor, dentist, veterinarian, or the like (Abstract). This system and method essentially involves scheduling an appointment with a doctor, dentist or veterinarian through the use of an online “booking form” (col. 8, line 30). Although the Cummings system can take input from a user regarding billing information and information about the nature of the medical concern (col. 8, lines 20-28), Cummings does not disclose or suggest any type of dynamic interview or generation of pre-visit information *including* an editable preliminary chart note with information relating to the patient’s medical condition, as disclosed in step (f) of claim 1 of Applicant’s invention. Further, although the system can



contain the possibility of “alerting” a physician by use of a wireless pager to indicate that a booking activity has occurred (col. 8, lines 45-51), this cannot be considered the generation of pre-visit information *including* an editable preliminary chart note with information relating to the patient’s medical condition. Still further, Applicant disagrees with the use of Cummings to obviate step (f) of claim 1, as step (f) is not directed to the generation of *any* “pre-visit information”, but rather to pre-visit information *including* an editable preliminary chart note with information relating to the patient’s medical condition. Applicant respectfully disagrees with Examiner’s parsing of “pre-visit information” from the rest of step (f), as step (f) is worded to include an editable preliminary chart note in the information generated by the server. Therefore, Applicant believes that step (f) claim 1 is not obvious in light of Cummings.

Further, Applicant respectfully disagrees with Examiner’s conclusion that one of ordinary skill in the art would have found it obvious at the time of the invention to include the teachings of Campbell with the teachings of Joao with the motivation of managing a medical practice. Although Joao is directed at the general “processing and/or providing healthcare information” (Title), Campbell is directed specifically at information relating to “managing physical exams” (Title). While there may be some resemblance between the two, the two patents are not in related classes and do not have an overlapping class that was indicated in the field of search of either patent. Therefore, because the patents are unrelated in function and classification, it would not have been obvious to include the teachings of Joao with the teachings of Campbell.

Likewise, Applicant respectfully disagrees with Examiner’s conclusion that one of ordinary skill in the art would have found it obvious at the time of the invention to include the teachings of Cummings with the teachings of Joao with the motivation of managing a medical practice. Although Joao is directed at the general “processing and/or providing healthcare information” (Title), Cummings is directed to a “scheduling interface system and method for medical professionals” (Title). While there may be some resemblance between the two, the two patents are not in related classes and do not have an overlapping class that was indicated in the field of search of either patent. Further, Claim 1 of Applicant’s invention expressly discloses a

method for creating a medical chart regarding a patient's medical condition *for which an appointment has been scheduled* with a physician, while Cummings involves scheduling an appointment for a physician. Thus, it would not have been obvious to one with ordinary skill in the art to examine a patent involving scheduling an appointment for a physician when claim 1 of Applicant's invention expressly states that the appointment has already been scheduled. Therefore, because the patents are unrelated in function and classification, it would not have been obvious to include the teachings of Joao with the teachings of Cummings.

Therefore, because Applicant believes that, as amended, claim 1 is not obvious in light of both Joao and Campbell and Joao and Cummings, Applicant believes that claim 1 is now in condition for allowance.

**B.** Regarding claim 2, claim 2 is dependent on claim 1. Given the amendment to and arguments in support of claim 1 as discussed above, Applicant believes that claim 2 is not obvious in light of Joao and is now in condition for allowance.

**C.** Regarding claim 3, for the reasons discussed above, Applicant respectfully disagrees with Examiner's conclusion that Applicant's invention is obvious in light of Campbell and Cummings. Fig. 9 of Campbell involves a screen that is available to a physician or veterinarian *after* an examination has occurred. The purpose of claim 3 in Applicant's invention is to generate a *pre-visit* report that can be used to help in diagnosis and treatment during the examination. Applicant believes that claim 3 is not obvious in light of Campbell and Joao because the purposes and timing of the generation of information for the physician are different. Further, similar to the rationale in section 7A of this response, Applicant respectfully disagrees with Examiner's conclusion that one of ordinary skill in the art would have found it obvious at the time of the invention to include the teachings of Campbell with the teachings of Joao with the motivation of managing a medical practice, as well as respectfully disagrees with Examiner's conclusion that one of ordinary skill in the art would have found it obvious at the time of the invention to include the teachings of Cummings with the teachings of Joao with the motivation

of managing a medical practice. Therefore, Applicant believes that claim 3 is in condition for allowance.

Further, claim 3 is dependent on claim 1. Given the amendment to and arguments in support of claim 1 as discussed above, Applicant believes that claim 3 is not obvious in light of Joao, Cummings, or Campbell, and is now in condition for allowance.

D. Regarding claim 4, claim 4 is dependent on claim 1. Given the amendment to and arguments in support of claim 1 as discussed above, Applicant believes that claim 4 is not obvious in light of Joao and is now in condition for allowance.

E. Regarding claim 11, Campbell does not disclose a system wherein the patient is interviewed by the server site regarding a specific condition. Rather, Campbell discloses that a “user” (nurse, doctor, and other personnel) can interview the patient and then input the responses into the computer. In Applicant’s invention, the patient is interviewed by the server using the patient’s own computer or device. Further, although Cummings discloses the input by the patient of information, such as billing information, Cummings does not disclose a method of creating a medical chart regarding a particular specific condition based on input from the patient.

Further, for similar reasons to paragraph 7A of this response, Applicant respectfully disagrees with Examiner’s conclusion that one of ordinary skill in the art would have found it obvious at the time of the invention to include the teachings of Campbell with the teachings of Joao with the motivation of managing a medical practice, as well as respectfully disagrees with Examiner’s conclusion that one of ordinary skill in the art would have found it obvious at the time of the invention to include the teachings of Cummings with the teachings of Joao with the motivation of managing a medical practice. Therefore, Applicant believes that claim 11 is not obvious in light of Joao, Campbell, or Cummings, and is in condition for allowance.

F. Regarding claim 12, claim 12 is dependent on claim 11. Given the arguments in support of claim 11 as discussed above, Applicant believes that claim 12 is not obvious in light

of Joao, and is now in condition for allowance.

**G.** Regarding claim 13, Examiner states that claim 13 substantially repeats the same limitations of claims 6 and 7, and is therefore rejected for the same reasons given for those claims. However, Examiner does not reject claims 6 and 7 with regard to Joao, Campbell, or Cummings in the present office action. Therefore, Applicant respectfully disagrees with Examiner's rejection of claim 13 and believes that claim 13 is in condition for allowance.

**H.** Regarding claim 15, claim 15 is dependent on claim 11. Given the arguments in support of claim 11 as discussed above, Applicant believes that claim 15 is not obvious in light of Joao, and is now in condition for allowance.

**I.** Regarding claim 17, for similar reasons to paragraph 7A of this response, Applicant earnestly believes that claim 17 is not obvious in light of Joao, Campbell, or Cummings, and is now in condition for allowance.

**J.** Regarding claim 18, claim 18 is dependent on claim 17. Given the arguments in support of claim 17 as discussed above, Applicant believes that claim 18 is not obvious in light of Joao, and is now in condition for allowance.

**K.** Regarding claim 19, for similar reasons to paragraph 7A of this response, Applicant earnestly believes that claim 19 is not obvious in light of Joao, Campbell, or Cummings, and is now in condition for allowance.

**L.** Regarding claim 20, claim 20 is dependent on claim 17. Given the arguments in support of claim 17 as discussed above, Applicant believes that claim 20 is not obvious in light of Joao, and is now in condition for allowance.

**M.** Regarding claim 21, claim 21 is dependent on claim 17. Given the arguments in support of claim 17 as discussed above, Applicant believes that claim 21 is not obvious in light

of Joao, and is now in condition for allowance.

N. Regarding claim 22, claim 22 is dependent on claim 17. Given the arguments in support of claim 17 as discussed above, Applicant believes that claim 22 is not obvious in light of Joao, and is now in condition for allowance.

O. Regarding claim 23, claim 23 is dependent on claim 17. Given the arguments in support of claim 17 as discussed above, Applicant believes that claim 23 is not obvious in light of Gilbert, and is now in condition for allowance.

P. Regarding claim 24, for reasons as stated in paragraph 7A of this response why Applicant believes that Joao does not make claim 1 obvious, Applicant similarly believes that claim 24 is not obvious in light of Joao, and is now in condition for allowance.

Q. Regarding claim 25, as claim 25 is similar to claim 7 with the exception of the citation of hardware elements, and as claim 7 was not rejected as obvious in light of Joao, Applicant believes that claim 25 is not obvious in light of Joao and is in condition for allowance.

R. Regarding claim 26, claim 26 is dependent on claim 24. Given the arguments in support of claim 24 as discussed above, Applicant believes that claim 26 is not obvious in light of Joao, and is now in condition for allowance.

S. Regarding claim 27, claim 27 is dependent on claim 24. Given the arguments in support of claim 24 as discussed above, Applicant believes that claim 27 is not obvious in light of Joao, and is now in condition for allowance.

T. Regarding claim 28, claim 28 is dependent on claim 24. Given the arguments in support of claim 24 as discussed above, Applicant believes that claim 28 is not obvious in light of Joao, and is now in condition for allowance.

U. Regarding claim 30, claim 30 is dependent on claim 24. Given the arguments in support of claim 24 as discussed above, Applicant believes that claim 30 is not obvious in light

of Joao, and is now in condition for allowance.

V. Regarding claim 32, for similar reasons to paragraph 7A of this response, Applicant earnestly believes that claim 32 is not obvious in light of Joao, Campbell, or Cummings, and is now in condition for allowance.

8. Claims 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joao, Campbell, and Cummings as applied to claim 1 above, and further in view of PR Newswire ("eSTeeM Software Solutions, Inc. Unveils New Version of ByteRite 2000 Product For the Orthodontist Practice Management Software Market" Jan 24, 2000. pg. 1; hereinafter "PR Newswire"). Applicant respectfully disagrees with this obviousness rejection in light of the arguments presented below.

A. As per claim 5, the examiner states that Joao "fail to expressly disclose the method for creating a medical chart regarding a patient's medical condition for which *an appointment has been scheduled* with a physician." The present invention is the only method which does this *prior to the office visit*, no other prior art reference teaches or remotely discloses doing the pre-office visit patient interview, and then creating an editable chart note. A physician's chart *necessarily* employs physician oriented language which *is always technical medical terminology*. By citing Joao, in combination with Campbell, Cummings, and the PR Newswire, the examiner here is engaging in improper hindsight. None of these disclosed methods perform the patient interview prior to the office visit. Campbell, Cummings and the PR Newswire, whether taken alone, or in combination, do not disclose or teach creating an editable chart note (which necessarily contains technical medical terminology, because all chart notes necessarily do, which is a common fact of medical practice) from a pre-visit interview with a patient who has scheduled an appointment, but has not yet been seen by the physician for that appointment. Therefore, the method disclosed in the present application cannot be considered "old and well known in the art." This is especially true in the case of the PR Newswire article. The letter stated therein is necessarily written after the diagnosis/treatment, which must occur after the

patient has been seen. None of these references apply here, pre-visit, and none suggest creating a chart note for the physician pre-visit. It is improper hindsight to state that these references when all combined make the present invention obvious. For these reasons, claim 5 is allowable as amended.

B. As per claim 6, same as for claim 5.

C. As per claim 7, same as for claim 5.

D. As per claim 8, same as for claim 5.

E. As per claim 9, same as for claim 5

F. As per claim 10, same as for claim 5.

9. Claims 14 and 29 are further rejected in view of Keene (5,325,294). The examiner states that 'Keene discloses the method for creating a medical chart regarding an office visit for a specific condition of a patient.' The Keene reference has nothing to do with creating a medical chart. It discloses a secure method for the patient to view his or her own medical history in a confidential fashion. The patient never views his or her medical chart, but rather a series of test results, etc. that do not even resemble a medical chart. Because Keene discloses that a patient can view his or her test results make this reference irrelevant to the instant application. To state that these features of claims 14 and 29 are obvious with regard to the Keene reference and the combination thereto of Joao, Campbell and Cummings is engaging in improper hindsight. Keene does not teach or even remotely suggest combining a secure network with the viewing of a medical chart, or a chart note. In fact, the term "medical chart" is not even found in Keene. A medical chart and test results are very different. Keene focuses on the ID card needed for a patient to view test results, not any chart of any kind, in a secure fashion. Applicant respectfully requests that the examiner reconsider these rejections in light of the fact that a medical chart necessarily contains technical medical terminology and clinical information. Also please reconsider with regard to the fact that the present application is the only one which provides for a

pre-visit patient interview (in layman's terms) that allows for the creation of an editable chart note (in physician oriented condition specific language), which the physician can read and review prior to the office visit and actually seeing the patient. None of which is taught in any of the cited references.

(A) Regarding claim 14, the claim should be allowable in its present form, based upon the foregoing arguments.

(B) Regarding claim 29, the claim should be allowable in its present form, based upon the foregoing arguments.

10. Claims 10 and 31 are further rejected in view of Gilbert (6,381,576). Gilbert concerns creating a flow chart for diagnosis and treatment, not a medical chart. Gilbert teaches and discloses using the method for performing medical studies regarding diagnosis and treatment regimens, and does not concern individual chart notes and medical charts. Furthermore, Gilbert does not suggest collecting answers from a patient regarding a specific medical condition and creating a chart note using this information collected. The combination of Joao, Campbell, Cummings and Gilbert do not make obvious the instant invention. Nowhere is it taught or remotely suggested that a pre-visit dynamically generated patient interview is subsequently used to create a chart note in physician oriented language. For the examiner in this case to say that the method is old and well known in the art as evidenced by Gilbert is factually incorrect and engaging in improper hindsight.

(A) Regarding claim 16, the claim should be allowable in its present form, based upon the foregoing arguments.

(B) Regarding claim 31, the claim should be allowable in its present form, based upon the foregoing arguments.

11. The examiner states that the "Applicant's arguments with respect to claims 1, xxxxx have been considered but are moot in view of the new ground(s) of rejection. Applicant does not



fully understand this sentence. What new ground(s)? However, in light of the arguments above, the rejection based on the addition of new matter should be withdrawn. No new matter was introduced. Figure 3 clearly supports the creation of a chart note from patient oriented questions. A chart note necessarily contains technical medical terminology and clinical information. Applicant has changed the wording accordingly, and the new wording within the specification and claims directly corresponds with that originally disclosed.

12. (A) through (E) based upon the remarks and argument made above claims 1, 3, 11, 16, and 27 should be in condition for allowance as amended.

(F) Regarding claim 7, the examiner has not misunderstood the claim. The patient is given questions to answer, but subsequently the patient is given questions to ask the physician by the system (see patient oriented condition specific summary report), as claimed in claim 6. Claim 7 relates to the questions asked by the physician, whereby the answers become part of the chart note latter generated, and containing physician oriented language and clinical information.

(F) Regarding claim 14, Joao does not mention EMT's and or emergency personnel such as fire and police being able to access the system. The list mentioned in Joao includes most hospital personnel and insurance company personnel and their intermediaries. Therefore, Joao does not suggest that the system can be accessed by emergency personnel not connected in some way with hospitals or insurance companies. Claim 14 should be allowable as amended.

(G) The examiner states that "All remaining arguments not directly address above are rendered moot based on new grounds of rejection necessitated by amendment. Applicant does not understand this sentence.

Regarding the new matter rejections, Applicant has shown clear and convincing evidence that the term "technical medical terminology" directly flows from the concept of what a chart note really is, and that is a note by physicians for physicians, in order for the communications between physicians to be more efficient.

Regarding the new references cited, namely, Keene and Gilbert, please refer to the above remarks/arguments.

Applicant acknowledges the references cited and not relied upon.

### **CONCLUSION**

All of the objections and rejections raised by the Examiner have been addressed by Applicant. Applicant earnestly believes that the “new matter” rejection should be withdrawn, as Applicant has clearly shown that no new matter was added, and Applicant has amended the necessary claims to include only language specifically disclosed in the original filing. Notwithstanding, Applicant respectfully requests that the examiner take notice of the fact that all chart notes contain technical medical terminology and clinical information by their very nature.

Attorney for Applicant has carefully reviewed each one of the cited references, namely the Joao, Campbell, Cummings, Keene and Gilbert patents, as well as the PR Newswire article, and believes that the new claims presently on file in the subject application are patentably distinguishable with respect to the prior art, either taken alone or in combination with one another. In view of the amendments to the disclosure, claims, and the remarks submitted herein, Applicant submits that all of the amended and previously presented claims of record are in condition for allowance and respectfully requests that a Notice of Allowance be issued in this case in due course.

Alternatively, Applicant respectfully requests that this amended be made of record.

Finally, Applicant respectfully requests an interview.

Application S/N 09/854,039  
Amendment/Response Dated March 13, 2006  
Reply to Final Rejection Mailed on January 13, 2006

If it is felt for any reason that direct communication with Applicant's attorney would serve to advance prosecution of this application to allowance, the Examiner is invited to contact the undersigned, attorney of record in this case, Richard D. Clarke, Esq., at one of the listed below numbers or at his below listed e-mail address.

Dated: March 13, 2006

Respectfully Submitted,

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By 

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